



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

Refer to:  
2003/00630

September 23, 2003

Mr. Lawrence Evans  
U.S. Army Corps of Engineers, Portland District  
ATTN: John Barco  
P.O. Box 2946  
Portland, OR 97208-2946

Re: Reinitiation of Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Act Essential Fish Habitat Consultation for the Bakers Ferry Road Culvert Repair and Bank Stabilization Project on Foster Creek, Tributary to the Clackamas River, Clackamas County, Oregon (Corps No. 200100211)

Dear Mr. Evans:

A biological opinion (Opinion) was completed by NOAA's National Marine Fisheries Service (NOAA Fisheries) pursuant to section 7 of the Endangered Species Act (ESA) on the effects of the culvert repair and bank stabilization at Bakers Ferry Road, Foster Creek, Clackamas County on August 18, 2003 (refer to: 2003/00630). On September 22, 2003, the Corps of Engineers (COE) contacted NOAA Fisheries to request a modification to the proposed action. The ESA-listed species that have the potential to be affected by this modification include Lower Columbia River (LCR) steelhead (*Oncorhynchus mykiss*), LCR chinook salmon (*O. tshawytscha*) and Upper Willamette River (UWR) chinook salmon (*O. tshawytscha*). The following amendments were discussed in a meeting with the applicant and the COE on September 19, 2003.

#### Modification to the Proposed Action

The applicant proposes to construct the proposed project at Bakers Ferry Road as described in the Opinion. However, the project is proposed for construction from September 24 - October 15, 2003, which is outside the recommended work window of July 15 - August 31.

The applicant is proposing the following changes to the project:

- All construction below ordinary high water (OHW) will be completed by October 15<sup>th</sup> or when rainfall necessitates demobilization of the work area.
- The stream will be diverted into one 12-inch pipe and one 18-inch pipe and sediment mat will be placed downstream of the diversion to capture any sediment that leaves the work area.
- The stream diversion will be removed if any adult salmonids are present downstream of the project area to prevent delay of upstream migration and spawning.



- If it appears high water will overwhelm the diversion pipes, all equipment and materials will be removed from below OHW within one day.
- If demobilization of the work area in the creek bed is required due to high water or fish passage, work will be completed from top of bank.
- As each level of the blocks are installed, exposed earth in the planting block outs will be protected with jute matting. If rain is forecasted, exposed slopes behind the walls will be covered with visqueen to prevent sediment discharge.
- A temporary stock pile of fill material will be placed behind the silt fence. The drain pipe from Bakers Ferry Road will be re-directed to this area after the temporary stockpile is removed.
- Gravel beds will be roughened as equipment is removed to mitigate for compaction from construction traffic.
- Exposed areas will be covered with erosion control fabric and hydroseeded with native seed mix and tackifier.
- All vegetation will be planted between November 15<sup>th</sup>, 2003 and February 15<sup>th</sup>, 2004.
- Erosion control measures will be inspected daily and deficiencies will be corrected immediately by the contractor. Erosion control inspections will continue through winter and spring during rain events and deficiencies will be corrected to minimize turbidity in Foster Creek.

#### Endangered Species Act Consultation

The biological requirements of the species, environmental baseline, effects of the proposed project and the cumulative effects remain the same as those stated in the 2003 Opinion. However, since work is occurring outside the recommended work window and closer to adult steelhead migration and spawning, extra precaution will be taken to prevent turbidity from entering Foster Creek. Any increased sedimentation released into Foster Creek could reduce survival of salmonid eggs in redds, a very sensitive life stage.

NOAA Fisheries finds that the proposed amendment to the action is not likely to jeopardize the continued existence of ESA-listed LCR steelhead, LCR chinook salmon or UWR steelhead. The reasonable and prudent measures with non-discretionary terms and conditions from the 2003 Opinion are necessary to minimize the impact of incidental take associated with this action.

Our conclusion is based on the following considerations: (1) The proposed amendment will further the project goal of protecting the failing banks and preventing turbidity from entering the creek; (2) work below OHW will be completed by October 15<sup>th</sup>, during which rainfall should be minimal; (3) use of the additional erosion control measures will prevent turbidity from entering the creek; (4) inspection of erosion control measures will allow deficiencies to be corrected quickly and appropriately; (5) the work area will be demobilized and diversions removed if any adult salmonids are present downstream of the work area; and (6) the combined effects of the original proposed action and this amendment will not retard the long-term progress of impaired habitat toward proper functioning condition essential to the long-term survival and recovery at the population or ESU scale.

Magnuson-Stevens Fishery Conservation and Management Act

This reinitiation and Opinion also serves as consultation on essential fish habitat pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and implementing regulations at 50 CFR Part 600. After reviewing the current status of the listed species, the environmental baseline for the action areas, the effects of the proposed action as amended, and cumulative effects, NOAA Fisheries has determined that the actions will adversely affect the EFH for chinook and coho salmon.

Pursuant to section 305(b)(4)(A) of the MSA, NOAA Fisheries is required to provide EFH conservation recommendations for any Federal or state agency action that would adversely affect EFH. The reasonable and prudent measures and the terms and conditions contained in 2003 Opinion are applicable to salmon EFH. Therefore, NOAA Fisheries incorporates each of those measures here as EFH conservation recommendations.

If you have any questions regarding this consultation, please contact Christy Fellas of my staff in the Oregon Habitat Branch at 503.231.2307.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Robert Lohn" followed by a stylized flourish.

D. Robert Lohn  
Regional Administrator

cc: Steve Maltby, Clackamas County  
Jim Grimes, ODFW  
John van Stavern, Pacific Habitat Services  
Mike Powers, DSL